

**Assembly Bill No. 2209**

\_\_\_\_\_

Passed the Assembly August 18, 2014

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_

Passed the Senate August 13, 2014

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2014, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 2001, 2003, 2010, 2031, 2032, 2036, 2038, 2039, 2043, 2082, 2088, 2102, 2103, 2105, 2124, and 2175 of, and to add Section 2176 to, the Financial Code, relating to money transmission.

## LEGISLATIVE COUNSEL'S DIGEST

## AB 2209, Dickinson. Money Transmission Act.

Existing law, the Money Transmission Act, provides for the regulation of money transmissions and, unless an exemption applies, requires the licensure by the Commissioner of Business Oversight of persons, including corporations and limited liability companies, to engage in this activity. Existing law declares the need to regulate money transmission businesses in the state, to maintain public confidence in financial institutions doing business in this state, and to preserve the health, safety, and general welfare of the people of California. Under existing law, a licensee under the act is required to file various reports with the commissioner with specified information, including the total volume of activities, number of transactions conducted, and outstanding money transmissions in California and the United States in a given calendar year quarter, as specified. Existing law makes it a felony to intentionally make a false statement, misrepresentation, or false certification in a record filed or required to be maintained under the act, or to knowingly engage in an activity for which a license is required without being licensed or exempt from licensure.

This bill would exempt from the requirements of the act a transaction in which the recipient of the money or other monetary value is an agent of the payee pursuant to a preexisting written contract and delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee. The bill would revise and reorganize various provisions of the act relating to, among other things, the definition of relevant terms under the act and the required contents of license applications and customer receipts. The bill would require that the report described above also include, if feasible, whether an outstanding money transmission was conducted via a mobile application or an Internet

Web site. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

This bill would authorize the commissioner to exercise any power set forth in the act with respect to a money transmission business, if necessary for the general welfare of the public, regardless of the licensure status of the money transmission business. The bill would revise provisions relating to the commissioner's authority to provide guidance to prospective applicants for a license to operate a money transmission business.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2001 of the Financial Code is amended to read:

2001. The Legislature finds and declares all of the following:

(a) Money transmission businesses conduct a significant amount of business in this state and technological advances are occurring in the provision of money transmission services, which have expanded money transmission to include the use of mobile applications, alternative point of sale systems, and other consumer payment systems.

(b) Persons who use money transmission businesses in this state use those businesses for, among other purposes, paying for the necessities of life and transmitting money to family members.

(c) The failure of money transmission businesses to fulfill their obligations would cause loss to consumers, disrupt the payments mechanism in this state, undermine public confidence in financial institutions doing business in this state, and adversely affect the health, safety, and general welfare of persons in this state.

(d) To protect the interests of consumers of money transmission businesses in this state, to maintain public confidence in financial institutions doing business in this state, and to preserve the health, safety, and general welfare of the people of this state, it is necessary to regulate money transmission businesses in this state.

SEC. 2. Section 2003 of the Financial Code is amended to read:

2003. For purposes of this division, the following definitions shall apply:

(a) “Affiliate,” when used with respect to a specified person, means any person controlling, controlled by, or under common control with, that specified person, directly or indirectly through one or more intermediaries. For purposes of subdivisions (s) and (x), a specified person is affiliated with another person if that person controls, is controlled by, or under common control through the ownership directly or indirectly of shares or equity securities possessing more than 50 percent of the voting power of that specified person.

(b) “Agent” means a person that is not itself licensed as a money transmitter in California and provides money transmission in California on behalf of the licensee, provided that the licensee becomes liable for the money transmission from the time money or monetary value is received by that person. However, “agent” does not include any officer or employee of the licensee when acting as such at an office of a licensee.

(c) “Applicant” means a person that files an application for a license or for acquisition of control of a licensee under this division.

(d) “Average daily outstanding” means the amount of outstanding money transmission obligations in California at the end of each day in a given period of time, added together, and divided by the total number of days in that period of time.

(e) “Branch office” means any office in this state of a licensee or agent at which the licensee receives money or monetary value to provide money transmission, either directly or through an agent.

(f) “Business day” means one of the following:

(1) When used with respect to any act to be performed in this state, any day other than Saturday, Sunday, or any other day that is provided for as a holiday in the Government Code.

(2) When used with respect to any act to be performed in any jurisdiction other than this state, any day other than a day that is a legal holiday under the laws of that jurisdiction.

(g) “Commissioner” means the Commissioner of Business Oversight.

(h) “Control” has the meaning set forth in Section 1250.

(i) “Day” means calendar day.

(j) “E-commerce” means any transaction where the payment for goods or services is initiated via a mobile application or an Internet Web site.

(k) “In California” or “in this state” means physically located in California, or with, to, or from persons located in California.

(l) “Issue” and “issuer” mean, with regard to a payment instrument, the entity that is the maker or drawer of the instrument in accordance with the California Commercial Code and is liable for payment. With regard to stored value, “issue” and “issuer” mean the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value. Only a licensee may issue stored value or payment instruments.

(m) “Licensee” means a corporation or limited liability company licensed under this division.

(n) “Material litigation” means litigation that according to United States generally accepted accounting principles is significant to an applicant’s or a licensee’s financial health and would be required to be disclosed in the applicant’s or licensee’s annual audited financial statements, report to shareholders, or similar records.

(o) “Monetary value” means a medium of exchange, whether or not redeemable in money.

(p) “Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(q) “Money transmission” means any of the following:

- (1) Selling or issuing payment instruments.
- (2) Selling or issuing stored value.
- (3) Receiving money for transmission.

(r) “Outstanding,” with respect to payment instruments and stored value, means issued or sold by the licensee in the United States and not yet paid or refunded by the licensee, or issued or sold on behalf of the licensee in the United States by its agent and reported as sold, but not yet paid or refunded by the licensee. “Outstanding,” with respect to receiving money for transmission means all money or monetary value received in the United States for transmission by the licensee or its agents but not yet paid to the beneficiaries or refunded to the person from whom the money or monetary value was received. All outstanding money

transmission of a licensee is and shall remain a liability of the licensee until it is no longer outstanding.

(s) “Payment instrument” means a check, draft, money order, traveler’s check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate.

(t) “Person” means an individual, corporation, business trust, estate, trust, partnership, proprietorship, syndicate, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or joint stock company, or any other organization or legal or commercial entity, provided, however, that “person,” when used with respect to acquiring control of or controlling a specified person, includes any combination of two or more persons acting in concert.

(u) “Receiving money for transmission” or “money received for transmission” means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means. The term does not include sale or issuance of payment instruments and stored value.

(v) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(w) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(x) “Stored value” means monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term does not include a credit card voucher, letter of credit, or any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(y) “Traveler’s check” means an instrument that meets all of the following:

(1) Is designated on its face by the term “traveler’s check” or by any substantially similar term or is commonly known and marketed as a traveler’s check.

(2) Contains a provision for a specimen signature of the purchaser to be completed at the time of purchase.

(3) Contains a provision for a countersignature of the purchaser to be completed at the time of negotiation.

SEC. 3. Section 2010 of the Financial Code is amended to read: 2010. This division does not apply to the following:

(a) The United States or a department, agency, or instrumentality thereof, including any federal reserve bank and any federal home loan bank.

(b) Money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service.

(c) A state, county, city, or any other governmental agency or governmental subdivision of a state.

(d) A commercial bank or industrial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank that is licensed under Chapter 20 (commencing with Section 1750) or that is authorized under federal law to maintain a federal agency or federal branch office in this state; a trust company licensed pursuant to Section 1042 or a national association authorized under federal law to engage in a trust banking business; an association or federal association, as defined in Section 5102, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor; and any federally or state chartered credit union, with an office in California, the member accounts of which are insured or guaranteed as provided in Section 14858.

(e) Electronic funds transfer of governmental benefits for a federal, state, county, or local governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof.

(f) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board.

(g) A person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from registration granted under the federal securities laws to the extent of its operation as such a provider.

(h) An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers, to the extent of its operation as such a provider.

(i) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

(j) A person that delivers wages or salaries on behalf of employers to employees or facilitates the payment of payroll taxes to state and federal agencies, makes payments relating to employee benefit plans, makes distribution of other authorized deductions from employees' wages or salaries, or transmits other funds on behalf of an employer in connection with transactions related to employees. Notwithstanding this subdivision, a person described herein that offers money transmission services or provides stored value cards directly to individual customers shall comply with this division to the extent of that activity.

(k) A person listed under subdivision (d) is exempted from all the provisions of this division, except Sections 2062 and 2063.

(l) A transaction in which the recipient of the money or other monetary value is an agent of the payee pursuant to a preexisting written contract and delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee.

(1) For purposes of this subdivision, "agent" has the same meaning as that term is defined in Section 2295 of the Civil Code.

(2) For purposes of this subdivision, "payee" means the provider of goods or services, who is owed payment of money or other monetary value from the payor for the goods or services.

(3) For purposes of this subdivision, "payor" means the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services.

SEC. 4. Section 2031 of the Financial Code is amended to read:

2031. Only the following persons may apply for or be issued a license:



(a) A corporation or limited liability company organized under the laws of this state.

(b) A corporation, other than a corporation organized under the laws of this state, that is qualified to transact intrastate business in this state under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(c) A limited liability company, other than a limited liability company organized under the laws of this state, that is qualified to transact intrastate business in this state under Article 8 (commencing with Section 17708.01) of the Corporations Code, except a limited liability company that is organized outside the United States shall not be issued a license.

SEC. 5. Section 2032 of the Financial Code is amended to read:

2032. (a) An applicant for licensure under this division shall pay to the commissioner a nonrefundable fee of five thousand dollars (\$5,000).

(b) An applicant for a license under this division shall do so in a form and in a medium prescribed by the commissioner by order or regulation. The application shall state or contain all of the following:

(1) The legal name and residential business address of the applicant and any fictitious or trade name used by the applicant in conducting its business.

(2) A list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the 10-year period next preceding the submission of the application.

(3) A description of any money transmission services previously provided by the applicant and the money transmission services that the applicant seeks to provide in this state.

(4) A list of the applicant's proposed agents and the locations in this state where the applicant and its agents propose to engage in money transmission.

(5) A list of other states in which the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state.

(6) Information concerning any bankruptcy or receivership proceedings affecting the licensee.

(7) A sample form of payment instrument or instrument upon which stored value is recorded, if applicable.

(8) A sample form of receipt for transactions that involve money received for transmission.

(9) The name and address of any bank through which the applicant's payment instruments and stored value will be paid.

(10) A description of the source of money and credit to be used by the applicant to provide money transmission services.

(11) The date of the applicant's incorporation or formation and the state or country of incorporation or formation.

(12) A certificate of good standing from the state or country in which the applicant is incorporated or formed.

(13) A description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded.

(14) The legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the 10-year period next preceding the submission of the application, of each executive officer, manager, director, or person that has control, of the applicant, and the educational background for each person.

(15) A list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control, of the applicant has been involved in the 10-year period next preceding the submission of the application.

(16) A copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application.

(17) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application.

(18) If the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under Section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m).

(19) If the applicant is a wholly owned subsidiary of:

(A) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under Section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m) and, if available, for

the two-year period next preceding the submission of the application.

(B) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States.

(20) The name and address of the applicant's registered agent in this state.

(21) The applicant's plan for engaging in money transmission business, including without limitation three years of pro forma financial statements.

(22) Any other information the commissioner requires with respect to the applicant.

(c) The commissioner may waive any of the information required under subdivision (b) or permit an applicant to submit other information instead of the required information.

SEC. 6. Section 2036 of the Financial Code is amended to read:

2036. The commissioner may impose on any authorization, approval, license, or order issued pursuant to this division any conditions that are necessary for the safety and soundness of the licensee, or reasonable or necessary to maintain or enhance consumer protection.

SEC. 7. Section 2038 of the Financial Code is amended to read:

2038. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing an application for a license is five thousand dollars (\$5,000), as provided in subdivision (a) of Section 2032.

(b) The fee for filing an application for approval to acquire control of a licensee is three thousand five hundred dollars (\$3,500).

(c) A licensee shall pay annually on or before July 1, a licensee fee of two thousand five hundred dollars (\$2,500).

(d) A licensee shall pay annually on or before July 1, one hundred twenty-five dollars (\$125) for each licensee branch office in this state.

(e) A licensee shall pay annually on or before July 1, twenty-five dollars (\$25) for each agent branch office in this state.

(f) Whenever the commissioner examines a licensee or any agent of a licensee, the licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars (\$75) per hour for each examiner engaged in the

examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(g) Whenever the commissioner examines an applicant, the applicant shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars (\$75) per hour for each examiner engaged in the examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(h) Each fee for filing an application shall be paid at the time the application is filed with the commissioner. No fee for filing an application shall be refundable, regardless of whether the application is approved, denied, or withdrawn.

SEC. 8. Section 2039 of the Financial Code is amended to read:

2039. (a) The commissioner may by order or regulation grant exemptions from this section in cases where the commissioner finds that the requirements of this section are not necessary or may be duplicative.

(b) In addition to any other reports as may be required pursuant to Sections 453, 454, and 455, each licensee shall, within 90 days after the end of each fiscal year, or within any extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year that shall comply with all of the following provisions:

(1) The audit report shall contain audited financial statements of the licensee for or as of the end of the fiscal year prepared in accordance with United States generally accepted accounting principles and any other information as the commissioner may require.

(2) The audit report shall be based upon an audit of the licensee conducted in accordance with United States generally accepted auditing standards and any other requirements as the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is

qualified, the commissioner may order the licensee to take any action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

(c) Each licensee shall, not more than 45 days after the end of each calendar year quarter, or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(1) Financial statements, including balance sheet, income statement, statement of changes in shareholders' equity, and statement of cashflows, for, or as of the end of, that calendar year quarter, verified by two of the licensee's principal officers. The verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) For issuers and sellers of payment instruments and stored value, a schedule of eligible securities owned by the licensee pursuant to Section 2081.

(3) Other information as the commissioner may by regulation or order require.

(d) Each licensee, not more than 45 days after the end of each calendar year quarter, shall file with the commissioner a report containing all of the following:

(1) The current address of each branch office of the licensee in this state. If a branch office was opened or closed during the calendar year quarter, the date it was opened or closed. If a branch office was relocated during the calendar year quarter, the addresses of the old and new locations and the date of relocation.

(2) The name of each person who acted as an agent in this state of the licensee during the calendar year quarter and the address for each agent branch office. If a person was appointed or terminated as an agent during the calendar year quarter, the date of appointment or termination. If an agent branch office relocated, the addresses for the old and new locations and the date of relocation.

(3) The total volume of activities, number of transactions conducted, and outstanding money transmission obligations in California under this division and in the United States in the calendar year quarter categorized by type of money transmission,

and, if feasible whether the transmission was conducted via a mobile application or an Internet Web site. For money received for transmission, a report of the average daily outstanding transmission liabilities in California, and, if applicable, a schedule of each foreign country to which money was sent, along with the total amount of money sent to that foreign country in that calendar year quarter. For payment instruments and stored value, a report of the average daily outstanding payment instruments and stored value liabilities in California in that calendar year quarter.

(4) Other information as the commissioner may by regulation or order require.

(e) Each licensee shall file with the commissioner other reports as and when the commissioner may by regulation or order require.

SEC. 9. Section 2043 of the Financial Code is amended to read:

2043. (a) On or before April 1, 2013, and annually thereafter, each licensee shall provide its agents under contract with training materials on recognizing elder or dependent adult financial abuse, and how to appropriately respond if the agent suspects that he or she is being asked to engage in money transmission for a fraudulent transaction involving an elder or dependent adult.

(b) To ensure that agents that are newly appointed by licensees pursuant to Section 2060 receive the training materials described in subdivision (a) in a timely manner, each licensee shall provide those materials to any newly appointed agent no later than one month following the appointment of that agent.

(c) This section shall not apply to licensees that are engaged solely in selling or issuing stored value pursuant to paragraph (2) of subdivision (q) of Section 2003. Licensees that engage in money transmission activities pursuant to paragraph (1) or (3) of that subdivision, shall be subject to this section only with respect to their agents under contract for activities described in those paragraphs. Additionally, this section shall not apply to licensees who exclusively offer their services via an Internet Web site, a mobile application, or both.

SEC. 10. Section 2082 of the Financial Code is amended to read:

2082. (a) “Eligible security” means any United States currency eligible security or foreign currency eligible security.

(b) For the purposes of this division, the following are United States currency eligible securities:

- (1) Cash.
- (2) Any deposit in an insured bank or an insured savings and loan association or insured credit union.
- (3) Any bond, note, or other obligation that is issued or is guaranteed by the United States or any agency of the United States.
- (4) Any bond, note, or other obligation that is issued or guaranteed by any state of the United States or by any governmental agency of or within any state of the United States and that is assigned an eligible rating by an eligible securities rating service.
- (5) Any bankers acceptance that is eligible for discount by a federal reserve bank.
- (6) Any commercial paper that is assigned an eligible rating by an eligible rating securities service.
- (7) Any bond, note, or other obligation that is assigned an eligible rating by an eligible securities rating service.
- (8) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), that holds itself out to investors as a money market fund, and that operates in accordance with all provisions of the Investment Company Act of 1940, and the regulations of the Securities and Exchange Commission applicable to money market funds, including Section 270.2a-7 of the regulations of the Securities and Exchange Commission (17 C.F.R. 270.2a-7).

For purposes of this paragraph and paragraph (9), “investment company,” “management company,” and “open-end” have the meanings set forth in Sections 3, 4, and 5, respectively, of the Investment Company Act of 1940 (15 U.S.C. Secs. 80a-4 and 80a-5, respectively).
- (9) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute eligible securities that comply with the valuation requirements of this division.
- (10) Any account due to any licensee from any agent in the United States on account of the receipt of money on behalf of the licensee for money transmission by the agent, if the account is current and not past due or otherwise doubtful of collection.

(11) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities.

(12) Any receivable owed by a bank and resulting from an automated clearinghouse, debit, or credit-funded transmission.

(c) “Foreign currency eligible security” means any of the following that is denominated in a foreign currency:

(1) Cash.

(2) Any deposit in an office of a bank acceptable to the commissioner that is located in a foreign country.

(3) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities pursuant to Section 2086.

(d) For the purposes of this division, “value” means the following:

(1) When used with respect to an eligible security owned by a licensee of the type described in paragraph (10) of subdivision (b), net carrying value as determined in conformity with United States generally accepted accounting principles. However, in computing the value of the account, any amount that consists of money that has not been remitted to the licensee or refunded within 45 business days of receipt by the agent shall be excluded from the value of the account and shall be excluded from the calculation of eligible securities.

(2) Market value when used with respect to any other eligible security owned by a licensee.

SEC. 11. Section 2088 of the Financial Code is amended to read:

2088. (a) The commissioner may by regulation or order declare a credit rating agency to be an eligible securities rating service if the commissioner finds the following with respect to the securities rating service:

(1) It has been continuously engaged in the business of rating securities for a period of not less than three years.

(2) It is competent to rate securities and is nationally recognized for rating securities in a competent manner.

(3) It publishes its ratings of securities on a nationwide basis.

(b) With respect to this division “eligible securities rating service” means any credit rating agency that the commissioner by



regulation or order declared to be an eligible securities ratings service.

SEC. 12. Section 2102 of the Financial Code is amended to read:

2102. (a) Every licensee or its agent shall refund to the customer within 10 days of receipt of the customer's written request for a refund any and all money received for transmission unless any of the following occurs:

(1) The money has been forwarded within 10 days of the date of receipt.

(2) Instructions have been given committing an equivalent amount of money to the person designated by the customer within 10 days of the date of the receipt of the money from the customer.

(3) The customer instructs the licensee to transmit the money at a time beyond 10 days. If the customer gives instructions as to when the money shall be forwarded or transmitted and the moneys have not yet been forwarded or transmitted, the licensee or its agent shall refund the customer's money within 10 days of receipt of the customer's written request for a refund.

(4) The refund would violate law.

(b) If a customer's instructions as to when the money shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted, the customer has a right to a refund of his or her money. A cause of action under this section may be brought in small claims court if it does not exceed the jurisdiction of that court, or in any other appropriate court. The customer shall be entitled to recover each of the following:

(1) Any and all money received for transmission, plus any fees and charges paid by the customer.

(2) A penalty in an amount not to exceed one thousand dollars (\$1,000). The court shall award the prevailing party costs and attorney's fees.

SEC. 13. Section 2103 of the Financial Code is amended to read:

2103. (a) In the case of money received for transmission, the licensee or its agent shall give the customer a receipt at the time of the transaction.

(1) The receipt shall contain the following information, as applicable:

(A) The name of the sender.

- (B) The name of the designated recipient.
  - (C) The date of the transaction, which is the day the customer funds the money transmission.
  - (D) The name of the licensee.
  - (E) The amount to be transferred to the designated recipient, in the currency in which the money transmission is funded, using the term “Transfer Amount” or a substantially similar term.
  - (F) Any fees and taxes imposed on the money transmission by the licensee or its agent which are payable or have been paid by the sender, in the currency in which the money transmission is funded, using the terms “transfer fees” for fees and “transfer taxes” for taxes, or substantially similar terms.
  - (G) The total amount of the transaction, which is the sum of subparagraphs (E) and (F), in the currency in which the money transmission is funded, using the term “total” or a substantially similar term.
  - (H) The exchange rate, if any, used by the licensee or its agent for the money transmission, rounded consistently for each currency to no fewer than two decimal places and no more than four decimal places, using the term “exchange rate” or a substantially similar term.
  - (I) For all transmissions, other than transmissions related to e-commerce transactions, the amount that will be received by the designated recipient, in the currency in which the funds will be received, using the term “total to recipient” or a substantially similar term. For transmissions related to e-commerce transactions, the amount that will be received by the designated recipient before any fees, taxes, or other amounts payable by the designated recipient are deducted, using the term “total to recipient” or a substantially similar term. These fees, taxes, or other amounts shall be disclosed to the designated recipient. The disclosure of fees, taxes, or other amounts payable by the designated recipient, which need not be disclosed to the sender, shall be disclosed as part of a separate written agreement between the licensee and the designated recipient.
- (2) (A) In addition to the disclosures set forth in paragraph (1), the receipt shall either include or have attached a conspicuous statement as follows:

“RIGHT TO REFUND

You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if \_\_\_\_\_ (name of licensee) does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.

If your instructions as to when the moneys shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted, you have a right to a refund of your money.

If you want a refund, you must mail or deliver your written request to \_\_\_\_\_ (name of licensee) at \_\_\_\_\_ (mailing address of licensee). If you do not receive your refund, you may be entitled to your money back plus a penalty of up to \$1,000 and attorney’s fees pursuant to Section 2102 of the California Financial Code.”

(B) The right to refund statement set forth in subparagraph (A) is not required to be included on receipts involving e-commerce transactions where the customer sends a payment for goods or services.

(3) The receipt required by this section shall be made in English and in the language principally used by that licensee or that agent to advertise, solicit, or negotiate, either orally or in writing, at that branch office, if other than English. For transactions that do not occur in a branch office, the receipt shall be made in English and in the language principally used by that licensee or that agent to advertise, solicit, or negotiate money transmission, either orally or in writing.

(4) The receipt required by this subdivision may be provided electronically for transactions that are initiated electronically or in which a customer agrees to receive an electronic receipt.

(5) Disclosures in the receipt required by this subdivision shall be in a minimum 8-point font, except for receipts provided via mobile phone or text message.

(b) If window and exterior signs concerning the rates of exchange for money received for transmission are used, they shall

clearly state in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, at that branch office if other than English, the rate of exchange for exchanging the currency of the United States for foreign currency. If an interior sign or any advertising is used that quotes exchange rates, it shall, in addition to clearly stating the rates of exchange for exchanging the currency of the United States for foreign currency, also state all commissions and fees charged on all such transactions.

(c) At each branch office, there shall be disclosed the exchange rates, fees, and commissions charged in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, with respect to money received for transmission at that branch office. At each branch office, there shall be signage clearly identifying the name of the licensee as well as any trade names used by the licensee at that branch office. In the event that a licensee or agent conducts money transmission activity via an Internet Web site or mobile application that is not in a branch office, the commissioner may authorize an alternative disclosure meeting the requirements of this section. Any Internet Web site through which a licensee conducts money transmission shall clearly identify the name of the licensee as well as any trade names used by the licensee on the Internet Web site.

(d) If the customer does not specify at the time the money is presented to the licensee or its agent the country to which the money is to be transmitted, the rate of exchange for the transaction is not required to be set forth on the receipt. If the customer does specify at the time the money is presented to the licensee or its agent the country to which the money is to be transmitted but the specified country's laws require the rate of exchange for the transaction to be determined at the time the transaction is paid out to the intended recipient, the rate of exchange for the transaction is not required to be set forth on the receipt.

SEC. 14. Section 2105 of the Financial Code is amended to read:

2105. (a) Each licensee or agent shall prominently post on the premises of each branch office that conducts money transmission a notice stating that:

“If you have complaints with respect to any aspect of the money transmission activities conducted at this location, you may contact the California Department of Business Oversight at its toll-free telephone number, 1-800-622-0620, by email at [consumer.services@dbo.ca.gov](mailto:consumer.services@dbo.ca.gov), or by mail at the Department of Business Oversight, Consumer Services, 1515 K Street, Suite 200, Sacramento, CA 95814.”

(b) The commissioner may by order or regulation modify the content of the notice required by this section. This notice shall be printed in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate either orally or in writing, with respect to money transmission at that branch office. The information required in this notice shall be clear, legible, and in letters not less than one-half inch in height. The notice shall be posted in a conspicuous location in the unobstructed view of the public within the premises. The licensee shall provide to each of its agents the notice required by this section. In those locations operated by an agent, the agent, and not the licensee, shall be responsible for the failure to properly post the required notice.

(c) In the event that a licensee or agent conducts money transmission activity via an Internet Web site or a mobile application that is not in a branch office, the commissioner may authorize an alternative form of the notice required in subdivision (a).

SEC. 15. Section 2124 of the Financial Code is amended to read:

2124. (a) A licensee shall maintain the following records for determining its compliance with this division for at least three years:

(1) A record of each payment instrument or stored value obligation sold.

(2) A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts.

(3) Bank statements and bank reconciliation records.

(4) Records of outstanding payment instruments and stored value obligations.

(5) Records of each payment instrument and stored-value obligation paid within the three-year period.

(6) A list of the last known names and addresses of all of the licensee's agents and their branch offices.

(7) Any other records the commissioner reasonably requires by order or regulation.

(b) A licensee or its agent shall maintain records of any receipts provided pursuant to Section 2102 for six months or a longer period of time specified in the contract between the licensee and its agent.

(c) The items specified in subdivisions (a) and (b) may be maintained in any form of record.

(d) Records may be maintained outside this state if they are made available to the commissioner on seven days' notice that is sent in a record.

(e) If records not required to be maintained in English pursuant to Section 456 are in a language other than English, the licensee shall provide records translated into English within seven days' notice that is sent in a record.

(f) Each licensee shall maintain any other records required by the commissioner.

SEC. 16. Section 2175 of the Financial Code is amended to read:

2175. The commissioner may offer informal guidance to any prospective applicant for a license under this division, regarding the conditions of licensure that may be applied to that person. The commissioner shall inform any applicant that requests that guidance of the minimum net worth, and other licensing requirements, that will be required of that applicant, based on the information provided by the applicant concerning its plan to conduct business under this division, and the factors used to make that determination as described in Section 2040.

SEC. 17. Section 2176 is added to the Financial Code, to read:

2176. At any time, if the commissioner deems it necessary for the general welfare of the public, he or she may exercise any power set forth in this division with respect to a money transmission business, regardless of whether an application for a license has been filed with the commissioner, a license has been issued, or, if issued, the license has been surrendered, suspended, or revoked.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



















Approved \_\_\_\_\_, 2014

\_\_\_\_\_  
*Governor*